IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/09/2004

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
and
THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

H.C.P.No.688 of 2004

Dhandapani .. Petitioner

-Vs-

1. The Commissioner of Police
Greater Chennai.

2. The Secretary to Government
Prohibition and Excise Department
Fort St. George
Chennai-600 009. .. Respondents

For petitioner : Mr.R.Ravichandran

For respondents : Mr.Abudu Kumar Rajarathinam
Govt. Advocate (Crl. Side)

:ORDER

The detenu who has been detained as a Goonda under the Tamil Nadu Act 14 of 1982, seeks to be released contending that the detention order dated 4.3.2004 is vitiated by several grounds.

2. Though several grounds have been raised, we are inclined to hold that two of the grounds raised by the learned counsel for the petitioner deserve serious consideration. We do not find it necessary to deal with the other grounds raised by him, considering that he is entitled to be released on one of the two grounds discussed below.

3. On 13.2.2004 at about 5.45 p.m., Senthil Kumar, the complainant is alleged to have been threatened by four persons including the detenu who had come in two motorcycles. The complainant was restrained by four individuals and was abused by them. He was threatened to part with his belongings. But when the complainant replied that he had nothing with him, one of the four persons took out a knife and threatened the complainant, while the detenu is

alleged to have inserted his hand into the complainant's shirt pocket and took away Rs.150/-, while another snatched away his wrist watch. The complainant shouted and when the public around the place rushed to the spot, the assailants are alleged to have attempted to escape after creating a scene of violence by picking up glass tumblers from the mobile tea shop and by throwing and breaking the glass tumblers into pieces on the road. There was a total panic in the area, resulting in traffic dislocation. However, the public, with the help of the police, successfully caught them and they were taken to Shastri Nagar Police Station. A complaint was lodged by Senthil Kumar, which was registered as Crime No.122 of 2004 under Sections 341, 336, 392, 427 and 506(ii), I.P.C. The Inspector took up investigation, visited the spot and prepared the observation mahazar and recorded statements of witnesses. Subsequently, confession statements of the four accused were recorded. They were later remanded to custody.

4. The Inspector, after taking note of the fact that the detenu was a chronic offender, having to his credit at least eight previous cases against him, felt that in public interest, he was liable to be detained under the Tamil Nadu Act 14 of 1982. Hence, the impugned order of detention.

5. Learned counsel for the petitioner very strenuously contends that in order to detain a person as a Goonda under the Tamil Nadu Act 14 of 1982, the basic requirement is not only to show that the detenu was involved in the ground case, but also that he was habitually addicted to the commission of the said offences. According to him, the detenu was involved in one complaint under Sections 420 and 384 of I.P. C., while the rest of the seven adverse cases related only to theft under Section 379, I.P.C. The ground case was the only case registered as a case of robbery and hence, a single case of robbery was not sufficient to invoke preventive detention. Apart from citing cases in support of his contention dealing with the expression "habitual", strong reliance is placed on the judgment of the Supreme Court in DARPAN KUMAR SHARMA @ DHARBAN KUMAR SHARMA V. STATE OF TAMIL NADU (2003 (1) CTC 382). Reference is made to the following observations:
" In the present case, the three alleged incidents to which the Commissioner of Police has referred to are thefts arising under Section 3 79 IPC and, therefore, there is only a solitary instance wherein the detenu is alleged to have robbed in a public place one Kumar. Therefore, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb the general peace and tranquility or create a sense of alarm and insecurity in the locality. Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order or detention for the purposes of preventing the petitioner from acting in a

manner prejudicial to the maintenance of public order. This ground is enough to quash the order of detention made by the respondents. "
Reference was also made to the judgment of the Supreme Court in T. DEVAKI V. GOVERNMENT OF TAMIL NADU (1990 S.C.C. (Crl.) 348).

6. Per contra, learned Government Advocate contends that the nature of offences committed by the detenu are glaring examples of disruption of public order and tranquility. The detenu was involved in a series of chain snatching cases. Such commission of theft at public places would result in creating panic in the minds of the public and a feeling of insecurity in the minds of the public in general. Even one incident will be sufficient to satisfy the detaining authority vide the judgment of the Supreme Court in ALIJAN MIAN V. DISTRICT MAGISTRATE ((1983) 4 S.C.C. 301).

7. We have given our serious consideration to the contentions thus raised.

8. Law relating to preventive detention, namely, detention without trial, has become an accepted mode of enforcement of criminal justice and it is no doubt true that Courts have adopted a stringent view of scrutinising the grounds of detention and to find out whether the same was strictly in accordance with law, and even a minor factor in favour of the detenu has to be held as sufficient to order his release. At the same time, Courts have also taken into account that in case of "Goondas" or "Dangerous Persons" or "Terrorists", in whatever name they are called, they indulge in grave offences relating to the society at large. Such offences have been treated as related to " Public Order" in contrast with "Law and Order", though the shade of difference between the two is really very narrow. To appreciate this distinction, it is necessary to note the relevant provisions under the Tamil Nadu Act 14 of 1982. Section 2(f) of the Act defines "Goonda" as a person who habitually commits or attempts to commit offences punishable under Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code. Under Section 2(a)(iii), while dealing with the scope of the expression "acting in any manner prejudicial to the maintenance of public order" in relation to a Goonda, what is required is that his activities should affect adversely, or are likely to affect adversely, the maintenance of public order. It is therefore clear that a single instance may not be sufficient to satisfy the requirement of habitual involvement and also a single conduct of a person being the result of a private motive or quarrel or personal vengeance could not be termed as involving "public order". But even one instance committed in public resulting in creation of disturbance to the public may be sufficient to satisfy the detaining authority, considered in the background of the past conduct of the detenu.

9. On the facts of the case reported in ALIJAN MIAN V. DISTRICT MAGISTRATE ((1983) 4 S.C.C. 301), cited above, only two instances were cited in support of the order of detention. The first related to assault on an individual who was witnessing a cultural programme and the second, going to another individual's house along with three others armed with bombs and guns and opening gun fire, resulting in serious injuries to the said individual,

resulting in grave panic and alarm in the area. The Supreme Court held that even one incident may be sufficient to satisfy the detaining authority which would depend upon the nature of the incident and that as the detaining authority was fully satisfied that there was apprehension of breach of public order, the order of detention was held valid.

10. The contention of the learned counsel for the petitioner is that though the detenu was involved in seven previous cases of theft, they are only cases simpliciter under Section 379, I.P.C., and that the charge of robbery was available only in the ground case and that as such, there was no breach of public order. We find ourselves unable to accept the said contention which is raised by relying on the judgment of the Supreme Court in DARPAN KUMAR SHARMA @ DHARBAN KUMAR SHARMA V. STATE OF TAMIL NADU (2003 (1) CTC 382). The ratio of that judgment has to be applied only to the facts of that case and it cannot be held that the Supreme Court had, as a question of law, held that notwithstanding the detenu's involvement in any number of cases of theft in public places, chain snatching, pick-pocketing in public places, etc., there is no involvement of public order. The factual background of the charges of the three past cases of theft and their proximity are not detailed in the judgment. In fact, the Supreme Court has observed that there was no material on record to show that the reach and potentiality of a single instance of robbery was so great as to disturb the even tempo or normal life of the community. Such observation is made apparently only in the context of the facts relating to that case.

11. Here is a case where the detenu had committed theft in public places, at least seven times, all within the city of Madras between 15.9.2003 and 7.2.2004, which include two thefts of motorcycles, three cases of chain snatching from ladies on public road and two cases of snatching of cell phones on the public road. On 10.3.2003, he is also alleged to have committed offences under Sections 384 and 420, I.P. C.

12. Chain snatching and grabbing of valuables in public places, streets and roads, pick-pocketing of hard earned money of any citizen, etc., have to be viewed seriously, as they have the result of causing grave public disorder and panic. Such conduct creates panic in the minds of the public and grave concern in their minds that they cannot move freely in public places. This results in serious threat to public tranquility and disturbance of even tempo of the life of the community. The offence is not directed against a particular individual for personal reasons or for vengeance, but is directed against the society, namely, every citizen walking in the public streets or roads. It is only such offences which, if not controlled, would create distrust in the minds of the citizens as regards the police administration and would reflect very badly on the day-to-day life and free movement of the common man in public places.

13. The judgment of the Supreme Court in DARPAN KUMAR SHARMA @ DHARBAN KUMAR SHARMA V. STATE OF TAMIL NADU (2003 (1) CTC 382) was, in fact, considered in some of the judgments of this Court. In H.C.P.No.2297 of 2002 (PANDIAN V. STATE OF TAMIL NADU), by order dated 29.7.2003, a Division Bench of this Court found that in

Darpan Kumar's case, there was no unity between the ground case and the adverse cases of theft under Section 379, I.P.C., and that in the case dealt with by the Division Bench, there was also a charge under Section 420, I.P.C., wherein the detenu, posing himself as an Income Tax Officer, had an ulterior motive to grab the property belonging to the complainant. In the present case also, the first adverse case relates to charges under Sections 420 and 384 of I. P.C. The said incident also relates to an occurrence within a period of one year from the ground case.

14. In A.PRABHU V. THE CHIEF SECRETARY TO GOVERNMENT AND ANOTHER in H.C.P.No.26 of 2003 also, by order dated 17.10.2003, the judgment in Darpan Kumar Sharma's case was considered. V.S.Sirpurkar,J., (as he then was), held that the said decision woul unacceptable in the case of too many thefts in a particular area as it will have the impact of disturbing the even tempo of public life.

15. In VASANTHA V. COMMISSIONER OF POLICE, CHENNAI in H.C.P.No.433 of 2003, by order dated 11.11.2003, a Division Bench of this Court dealt with a case of chain snatching. M.Karpagavinayagam,J. held that repeated instances of chain snatching would relate to an offence which would disturb the public order.

16. In JESSI V. THE COMMISSIONER OF POLICE, TRICHY in H.C.P.No.860 of 2001, by order dated 18.9.2001, a Division Bench of this Court was dealing with a case where, in the adverse cases, the detenu stood charged under Sections 307, I.P.C. and 379, I.P.C. and the ground case related to offence under Section 394, I.P.C., it was contended that no public order was involved. The Division Bench, after analysing the provisions, held that the conduct of the detenu had prejudicially affected the even tempo of the life of the community.

17. The judgment cited by the learned counsel for the petitioner in T.DEVAKI V. GOVERNMENT OF TAMIL NADU (1990 S.C.C. (Crl.) 348) relates to a single incident of attempted assault on a Minister in a seminar because of political rivalry. The facts of the said case would be of no help to the petitioner.

18. The contention of the learned counsel for the petitioner also overlooks the definition of "Goonda" under Section 2(f) of the Tamil Nadu Act 14 of 1982, namely, a person who commits offences punishable under Chapters XVI, XVII and XXII of I.P.C. Section 379, I.P.C. falls in the said category and the detenu having committed a series of seven thefts in a short period between 15.9.2003 and 7.2.2004 followed by the ground case of robbery, is certainly amenable to preventive detention. We are, therefore, unable to accept the said contention of the petitioner.

19. Though we are inclined to reject the plea of the petitioner, as discussed above, yet, we are constrained to order the release of the detenu, having regard to the issue dealt with below, which discloses non-application of mind by the detaining au ity as regards the facts relating to the ground

case.

20. In the detention order, after mentioning the registering of the complaint as Crime No.122 of 2004 and commencement of investigation by the Inspector of Police, reference is made to the visit of the Inspector to the spot, preparation of the Observation Mahazar, collection of broken glass pieces under another mahazar and recording of confession statements of all the four accused. It is therefore clear that for arriving at the subjective satisfaction, the detaining authority has relied on the Observation Mahazar and the mahazar for recovery of certain articles as well as the confession statement. However, on a perusal of the paper book furnished to the detenu, it is seen that there are vital contradictions and corrections regarding the timings. The numbers mentioned below in brackets refer to the page numbers. In the remand requisition letter (259), it is stated that the Observation Mahazar was prepared at 18.30 hours and the confession statement of the detenu was obtained at 19.45 hours. In contrast, the timing in the Observation Mahazar (177) is given as 22.15 hours and in the mahazar for recovery (181) as 22.30 hours. In the confession statement (197), the timing is given as 18.20 hours. Apart from the glaring contradiction in the timings, the sequence of events, as narrated in the detention order and the remand requisition read as though the preparation of the Observation Mahazar and the mahazar for recovery of materials preceded the recording of the confession statement. But the timings given in the respective documents, as shown above, reveal that the confession had been recorded very much earlier to the preparation of both the mahazars. That apart, there are corrections and overwritings in those documents in the mentioning of the timings, namely, at pages 177, 181 and 183 (seizure list). While the corrections at pages 177 and 181 are initialled, the correction at page 183 is not initialled. Even if the corrections are taken to be genuine, there is no explanation regarding the discrepancies in the timings and the sequence of events, as stated in the detention order.

21. In most of the detention orders, the time of recording of the confession is usually mentioned, if not, the timing of preparation of the mahazar. But, in this case, there is no reference to the timings of preparation of the Observation mahazar, mahazar for recovery of materials and the confession statement. It is not known as to whether the detaining authority was actually aware of the discrepancies. At any rate, it is not disputed that the detaining authority had not sought for clarification or explanation from the sponsoring authority, which ought to have been done.
22. As a result, we are inclined to hold that the defects, as pointed out above, disclose vital discrepancies regarding the ground case and non-application of mind by the detaining authority.

The Habeas Corpus Petition is allowed and the order of detention is set aside. The respondents are directed to release the detenu forthwith from custody, unless his custody is required in connection with any other case.

Index: Yes
Internet: Yes

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To:
1. The Commissioner of Police
Greater Chennai.

2. The Secretary to Government
Prohibition and Excise Department
Fort St. George
Chennai-600 009.

3. The Superintendent
Central Prison
Chennai.
(in duplicate for communication to detenu)

4. The Joint Secretary to Government
Public (Law & Order)
Fort St. George
Chennai-9.

5. The Public Prosecutor
High Court, Madras.